DOCUMENT RESUME

ED 441 959 CE 080 230

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TITLE	Learning and Skills: Opportunities or Threats for Disabled Learners? FEDA Responds.
INSTITUTION	Further Education Development Agency, London (England).
ISBN	ISBN-1-85338-546-8
PUB DATE	2000-00-00
NOTE	9p.
AVAILABLE FROM	Further Education Development Agency, Citadel Place, Tinworth Street, London SE11 5EH, United Kingdom. Tel: 020 7840 5302/4; Fax: 020 7840 5401, e-mail: publications@feda.ac.uk. For full text: http://www.feda.ac.uk/PDF/ISBN1853385468.PDF.
PUB TYPE	Opinion Papers (120)
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	*Access to Education; Developed Nations; Educational Discrimination; *Educational Legislation; *Equal Education; Foreign Countries; *Learning Disabilities; *Learning Problems; *Postsecondary Education; Special Education
IDENTIFIERS	Great Britain

ABSTRACT

Challenges will be created by proposed changes to post-school education and training for people with learning difficulties and disabilities. Two important bills have been proposed. The Learning and Skills Bill (LSB) changes the whole architecture of the post-school education and training sector. LSB sets up the Learning and Skills Council (LSC) responsible for planning and funding all post-16 education and training; signals a strong emphasis on and commitment to equality of opportunity; allows LSC to secure provision of boarding accommodation; clearly differentiates between provision for youth aged 16-19 and adults over 19; and introduces a requirement for compulsory assessment of pupils with statements of special educational needs. The new Youth Support Service will be responsible for the implementation of these assessment duties. New powers to secure a wider range of learning could address a major barrier to access for learners with learning difficulties and disabilities. A key question is how the LSC will provide funding. The Disability in Education Bill (DEB) enshrines, for the first time, disability rights in education within legislation. It would make it unlawful to discriminate against a disabled person by failing to make a reasonable adjustment or to treat him or her less favorably. DEB provides a further opportunity to overcome some of the most intransigent barriers to access learning. (YLB)

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ED 441 959

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Learning and Skills: opportunities or threats for disabled learners?

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1. This paper outlines and comments on the proposed changes to post-school education and training for people with learning difficulties and disabilities. It identifies the challenges ahead and describes the implications.

2. The paper is written at a time when two important Bills are on the way to the statute book. The Learning and Skills Bill will change the whole architecture of the post-school education and training sector, and The Disability in Education Bill will, for the first time, enshrine disability rights in education within legislation. What is written here represents the most up-to-date position, but readers are reminded that ideas are being developed and announcements are being made on a daily basis.

The Learning and Skills Bill

3. The Learning and Skills Act will set up a new body, the Learning and Skills Council (LSC), which will be responsible for planning and funding all post-16 education and training, excluding higher education. The new Learning and Skills sector will be a large, diverse and complex sector. It will be well placed to realise the vision described in *The learning age*, for a broader range of lifelong learning, for individuals, communities and the economy. It brings the welcome opportunity to remove some of the inequities of the previous arrangements.

Duties

4. The Bill and its associated documentation (the prospectus and explanatory notes) signal a strong emphasis on and commitment to equality of opportunity. The white paper *Learning to succeed* states that learners with learning difficulties and/or disabilities must be supported to ensure that they can achieve their full potential.[1] The paper goes on to say that all the LSC's policies and programmes will promote equality of opportunity and challenge discrimination with the providers and employers. To achieve this, LSCs will ensure that learners who need additional support get the help they need.[2]

5. The Bill continues the requirement of the 1992 Further and Higher Education Act (FHE Act), to 'have regard' to the needs of learners with learning difficulties. This was a helpful clause as it ensured that provision for these learners was subject to particular attention. As the current Bill passed through the Lords, an amendment was passed sanctioning an even stronger duty. In addition to the duty to 'have regard,' the LSC will have due regard to 'promote equality of opportunity between disabled and non-disabled learners.' Although the exact wording is not yet known, we welcome this amendment as it will require positive action from the LSC to promote equality in carrying out its duties and in planning.

Residential provision

6. The Bill allows the Learning Skills Council to secure the provision of boarding accommodation for young people if it cannot otherwise secure provision of adequate education or training. In the case of young people under the age of 25, the Learning Skills Council *must* secure boarding provision. For those over 25 the LSCs *may* secure such provision. This mirrors the current arrangements made by the FEFC.

7. The Bill provides an opportunity to overcome the widespread dissatisfaction with the current placement process reported in FEDA research.[3] A positive change to the process through which a young person is assessed as needing residential provision has been signalled.

8. At present the FEFC must be assured that suitable provision is not available in a sector college. In practice this means that young people are required to undergo assessment at one or more local sector colleges, before the FEFC will consider funding a residential placement. In response to questions raised in the House of Lords, assurances have been given that this will no longer be necessary. This is a welcome change to a longstanding problem.

Definitions of disability

9. The Bill uses two different definitions of disability in different places. We consider that this is confusing and may lead to some anomalies. Helpfully, the Bill uses the broader 1992 Further and Higher Education Act (FHE Act) definition of learning difficulty, which includes disability, in relation to the duties to 'have regard' and to 'promote equality'.

10. The other definition used is that of 'disability' used in the 1995 Disability Discrimination Act (DDA). The DDA defines a disabled person as someone who has: 'a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities'. This definition is used in relation to disability rights.

11. The main difference between the two definitions is that the DDA definition requires the disability to be more substantial in effect and that it must be long term. Learners with temporary, albeit severe disabilities arising from an accident for example, or sporadic mental ill health would be included only in the parts covered by the FHE Act definition.

Young people and adults

12. The Bill clearly differentiates between provision which is for young people who are 16–19 years old and adults who are 19+. The effect of this split is likely to be seen in the priority given to the different groups of learners. We are concerned that a new divide might be created between learning for young people and adults. We are also aware that priority might be given to the needs of young people over adults.

13. The inspection for the two age groups will be carried out by different bodies, although they will follow a common framework. The schools inspectorate Ofsted will have overall responsibility and will inspect most 16–19 provision, while a new Adult Learning Inspectorate (ALI) will inspect adult provision. This split at 19 is particularly unhelpful for people with learning difficulties and disabilities as their progress is likely to be slower than for other young people.

Assessment

14. The Learning and Skills Bill introduces a new requirement for assessment. The Secretary of State, through the newly formed Youth Support Service, has duties to arrange for an assessment of education and training needs. This is to be carried out during students' last year of compulsory schooling, that is, at age 16. However, an assessment *must* be carried out only for pupils who have statements of special educational needs; it is compulsory for these young people.

15. For many others between the ages of 16 and 19, the duty to carry out an assessment is weaker. The Bill states that the assessment *may* be carried out, but is not compulsory. In addition, young people who do not have statements but who 'appear' to have learning difficulties and disabilities 'may' have an assessment, but again it will be optional not compulsory. We believe that all young people up to the age of 25 who have significant learning difficulties and disabilities should have an entitlement to an assessment of their needs.

16. We welcome the requirement to carry out a thorough assessment prior to leaving school. This should smooth the transition process which is often problematic. However, we are concerned that the way in which the legislation is framed will not achieve this as effectively as it should. The major difficulty is that possession of a statement of Special Educational Need is not an accurate indicator of support need. The process for statementing is highly variable and it does not follow that all young people with high levels of support requirement receive a statement.

17. The use of the statement as the indicator is neither fair nor equitable. Whether or not young people have a statement depends more on where they live than on the nature or complexity of their support needs. Some local authorities have taken strategic discussions to reduce or discontinue providing statements and this will deny young people access to assessment.

18. Young people with more profound complex disabilities or learning difficulties arguably have the greatest need for an assessment. Yet generally they remain at school until 19, so they will not be guaranteed an assessment. The proposed cut-off at the age of 19 is particularly inappropriate as many young people will have educational needs way beyond this age. It conflicts with another duty of the Learning and Skills Council, within the same bill, to secure residential provision for young people until the age of 25. If proposed amendments to the Bill are successful, the weaker duty is likely to be extended to 25 years for young people with learning difficulties and disabilities.

Connexions, Youth Support Service

19. The new Youth Support Service, described in the Connexions report[4] will be responsible for the implementation of these assessment duties. This service is not subject to legislation but is specified by government. The Connexions service aims to enable all young people aged 13–19 to participate effectively in learning. It will draw staff from careers and youth services. The proposal is to provide three levels of support. Level 3 is general advice and support, level 2 is in-depth support and level 1 is specialist support. The Connexions Service will be expected to assess all young people as they approach the age of 13 and allocate them to one of these three groups.

20. The report refers to services for young people with learning difficulties and disabilities. It acknowledges the current statutory duty to provide for these young people over the age of 19, but does not state that this duty will continue under the new arrangements. We consider that these proposals present a considerable threat. Young people over the age of 19 with learning difficulties and disabilities could lose the support to which they are currently entitled. Few young people with learning difficulties and disabilities will have completed their education and training by the age of 19. The loss of support at this age is likely to be highly damaging. We are also concerned that the resources allocated to this service will be sufficient to allow priority to be given to young people over the age of 16 including those without statements.

Access to Learning

21. Few tears will be shed over the demise of schedule 2 of the FHE Act. The new Bill presents a great opportunity for change. The new powers to secure a wider range of learning could address a major barrier to access for learners with learning difficulties and disabilities.

22. The FHE Act restricted FEFC to funding only provision listed in schedule 2. Debate has continued over the eligibility criteria for schedule 2 that has never satisfactorily been resolved. For courses designed for people with learning difficulties and disabilities there is a requirement that the course must enable them to progress towards other academic or vocational qualifications. This has been a longstanding stumbling block especially for learners with the most profound and complex disabilities who have been largely excluded from FEFC-funded provision.

23. There is a real opportunity to open up participation in further education to learners who currently fail to meet the criteria. However, there is as yet no guarantee that there will be equality of access. There is no entitlement to education after the age of 19 and it is unclear what level of priority will be given to non-vocational, lifelong learning. The question is: given that resources are finite, will funding be available for learning related to the development of personal skills and greater independence?

Consultation on funding

24. There will be a stronger entitlement to learning for people with learning difficulties and disabilities and a key question is how the Learning and Skills Council will provide the funding to match it. There is a great opportunity to overcome the current variations in funding additional support. Currently it is quite possible for individuals with identical support needs on the same learning programme to be receiving entirely different levels and forms of support. This is because the funding source determines how and how much funding is allocated.

25. We believe that the additional support mechanism developed by FEFC should be the basis for the development of an approach to funding. FEDA has evaluated the effectiveness of the support mechanism for FEFC[5] and has clear evidence that not only does it work well but that it is highly valued. From our experience, we have gathered evidence that colleagues from work-based training and local authority provision would also welcome this approach. The implications of adopting this approach are minor for FE colleges but other providers will face substantial changes to the approaches they currently experience.

26. The strength of the additional support mechanism is that it matches three crucial components: the support required by individuals (not the nature of their disability), the learning programme they are undertaking, and the cost of that support. This means that institutions are not financially penalised for providing proper support, that is, support that is appropriate and sufficient in quantity. The mechanism is capable of handling the very wide range of contexts in which FE learners engage and reflects their individual needs and aspirations rather than their label.

27. We are particularly opposed to any mechanism that allocates funding on the basis of a category of disability rather than the nature of support need. Learners with identical disabilities may have completely different support needs. Categorisation by disability or label is based on an inappropriate medical model which conflicts totally with the concept of inclusive learning.

28. The consultation document poses the question: 'Do you agree that a matrix approach to funding of students with learning difficulties and/or disabilities would allow for a greater transparency and consistency of treatment?'.

29. We understand the attractions of the use of a matrix such as that used by FEFC for funding learners placed at specialist residential colleges. At first sight, it appears straightforward and has enabled convergence of funding. However, the range of variables is far smaller than in FE sector colleges. The matrix focuses on learners with more severe and/or complex difficulties and on institutions that cater for the specialised needs of a relatively small number of learners with particular requirements in common. The nature of the learning opportunities they offer are also comparatively narrow as virtually all programmes are full time and cover a 24-hour curriculum. The matrix may be appropriate for this context, but we do not believe it will transfer to the wider Learning and Skills sector with its huge diversity of provision. The scale of provision is an indicator of this. There are approximately 1200 learners funded at specialist colleges and about 120,000 learners in FE colleges receiving funding for additional support. We are convinced that the approach of the FEFC (England) to funding additional support is the way forward and we hope that we can at last have equality of access to additional support for all who need it.

Disability Rights Legislation

30. The Disability Discrimination Act has now been in force for five years. Although it covers training and some aspects of the activities that further education undertakes, such as their duties as employers, education has been excluded from the legislation. This is recognised as a major gap and the government believes it to be unjustified and indefensible.

31. The government set up the Disability Rights Task Force (DRTF) to examine how to improve disability rights. The DRTF's report[6] recommends that education be brought within the disability rights legislation framework. The government has given a commitment to ensuring comprehensive civil rights for disabled people and it plans to introduce Disability in Education legislation in this session of parliament.

32. The proposed legislation, currently under consultation, would make it unlawful for education providers to discriminate against a disabled person by failing to make a reasonable adjustment. It would also be unlawful to treat a disabled person less favourably as a result of his or her disability, than others who do not have a disability. This is a welcome measure as it provides the opportunity to challenge discrimination and improve access.

33. Once the legislation is in place, the recently appointed Disability Rights Commission will be there to ensure that disability rights are enforced. The Disability in Education Bill provides a further opportunity to overcome some of the most intransigent barriers to access to learning, for example, transport to and from the place of learning for disabled people. We believe this is an important step forward towards equality of access and opportunity for disabled people.

Looking ahead

34. There is much to celebrate in the proposals that are before us. The opportunity is there to ensure an unprecedented entitlement to access to learning for young people and adults with learning difficulties and disabilities. However, the proposals are not without threats; we hope that the potential divide between access to provision for young people and adults will not be realised. We want to make sure that the difference between duties which the LSC *must* or *may* carry out does not stifle the government's best intentions.

Notes

1. *Learning to succeed* Chapter 3: The planning and funding framework, p29, para 3·17. DfEE, 1999.

2. *Learning to succeed* Chapter 4: How will the LSC meet the needs of individuals, businesses and communities? p36, para 4·4. DfEE, 1999.

3. Faraday S, Maudslay L, Palmer M and Richardson S. *Assessing for placement at residential specialist college*. FEDA, 1999.

4. *Connexions the best start in life for every young person*. DfEE, 1999. This publication can be downloaded from the Internet at www.connexions.gov.uk

5. Faraday S, Fletcher M, Gidney M. *Evaluation of additional support mechanism*. FEDA, 1999.

6. *From exclusion to inclusion*. The Disability Rights Task Force, 1999.

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